JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: CHARGE OF JUDICIAL MISCONDUCT

No. 10-09-90058

Before **HENRY**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Misconduct Rules"); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 et seq., and 3) the "Breyer Report," a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled Implementation of the Judicial Conduct and Disability Act of 1980. The Breyer Report may be found at: http://www.supremecourtus.gov/publicinfo/breyer committeereport.pdf. To the extent that any relevant prior decisions of the full Judicial Council of this circuit consistent with those authorities exist, they may also govern my consideration of this complaint.

Complainant has received or has access to a copy of the Misconduct Rules. In accord with those rules, the names of the complainant and subject judge shall not be disclosed in this order. See Misconduct Rule 11(g)(2).

Complainant contends that the subject judge has delayed ruling on two underling cases for over a year, and speculates that it may be because of the judge's "age or some other unknown infirmity [that] may cause him to be unable to manage his existing caseload." Claims of delay may constitute valid misconduct claims if the delay can be shown to be the product of improper motive or there is "habitual delay in a significant number of unrelated cases." Misconduct Rule 3(h)(3)(B). Complainant's speculation about age and infirmity do not provide evidence such that I can reach a reasonable inference about either ill motive or habitual delay. See Misconduct Rule 11(c)(1)(D) (allowing dismissal of a judicial misconduct complaint if the claims therein are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists"). Further, my review of the relevant docket sheets demonstrates no delays extending to the year's period of time claimant alleges.

Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the respondent judge and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in Misconduct Rule 18(b).

The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. *Id*.

So ordered this 19th day of October, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry Chief Circuit Judge